

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

**MOTION TO EXCLUDE (FILED BY DEFENDANTS BIRCH TREE HOLDINGS, LLC,
JOSHUA AYRES, AND TROY HELDERMAN)**

Defendants, Birch Tree Holdings, LLC (“Birch Tree”), Joshua Ayres, and Troy Helderman, by counsel, pursuant to Rule 702 of the Federal Rules of Evidence and Rule 26 of the Federal Rules of Civil Procedure, respectfully move to exclude and/or limit the testimony and opinions from Plaintiff’s experts, Candace Ashby, Mark D. Culver, and Michael Vergon (as well as excluding Jeff Tipton from testifying at trial for the following reasons):

1. Plaintiff's expert disclosure for Candace Ashby and Mark D. Culver fails to comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure which requires the automatic and mandatory sanction of excluding them from testifying at trial.
2. Mark D. Culver, even if permitted to testify for some reason, is not qualified to render any opinion that the supposed lack of functioning smoke alarms contributed to the minors' deaths. And, his corresponding opinion lacks a scientifically reliable methodology.

3. Michael Vergon is not qualified as an expert to testify that functional smoke alarms would have changed the outcome. And, as with Culver, such opinion lacks a scientifically reliable methodology.
4. Jeff Tipton must not be permitted to testify at trial because no party disclosed him as an expert witness, and he was Birch Tree's consulting expert.

In support of this Motion to Exclude, Defendants designate and rely upon the following:

1. Plaintiff's Expert Disclosure dated August 5, 2021, attached as Exhibit A;
2. Deposition of Mark D. Culver attached as Exhibit B; and
3. Deposition of Michael Vergon attached as Exhibit C.

WHEREFORE, Defendants, Birch Tree Holdings, LLC, Joshua Ayres, and Troy Helderman respectfully request the Court to exclude Plaintiff's expert witnesses from trial as set forth herein as well as Jeff Tipton (and for all other just and appropriate relief).

Respectfully submitted,

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/CM/ECF system which sent notification of such filing to the following:

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